Century acknowledges, TDS's ownership interests in UTELCO were listed in both amendments.

TDS did not however discuss UTELCO's entering into the settlement agreement discussed above.

It did not occur to TDS that it had an obligation to report the existence of a settlement agreement to which it was not a party and which it had no intention or way of implementing. It did not occur to TDS that the action of UTELCO in entering into an agreement, which did not include TDS rendered the information furnished in TDS's application inaccurate in any "significant respect" or indeed in any respect. Nor does Century cite any authority to suggest that this type of "interest" is reportable under Section 1.65 of the Commission's Rules.

If the FCC does nonetheless consider UTELCO's entering into the settlement agreement to be a reportable event, TDS regrets its error and will file a corrective amendment. However, we reiterate our position that since the settlement agreement imposes neither duties nor obligations on TDS and does not change in any way the information in TDS's application, as amended, TDS had no obligation to report its existence.

Conclusion

For the foregoing reasons, the Petition To Dismiss or Deny filed by Century should be denied and TDS's application should be expeditiously granted.

Respectfully submitted,

By: /s/ Alan Y. Naftalin
Alan Y. Naftalin

/s/ Peter M. Connolly
Peter M. Connolly

Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

August 28, 1989

Its Attorneys

Certificate of Service

I, Theresa Belser, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Reply" on the following, by First Class United States Mail, this 28th day of August, 1989:

Kenneth E. Hardman, Esq.
1200 - 29th Street, N.W.
Washington, D.C. 20007

By /s/ Theresa Belser
Theresa Belser

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
	)	
Application for construction permit to establish a new cellular system operating on Frequency Block B in the DPCRTS serving the Wisconsin 8 - Vernon Rural Service Area (Market No. 715)	)	

To: The Chief, Mobile Services Division
Common Carrier Bureau

MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION

Century Cellunet, Inc. ("Century"), by its attorney, hereby respectfully moves the Commission for leave to file the annexed Supplemental Declaration Under Penalty of Perjury in the above-captioned proceeding, and in support thereof, respectfully shows:

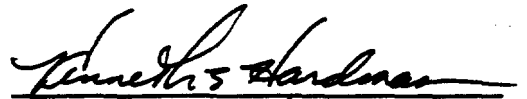
In its Reply to Petition to Dismiss or Deny filed under date of August 28, 1989, Telephone and Data Systems, Inc. ("TDS") premises its arguments in substantial part on certain incorrect factual assertions concerning the settlement negotiations between the applicants for the Wisconsin 8 - Vernon Rural Service Area. In order for the Commission to have before it an adequate factual record on which to base its decision herein, Century has caused the

annexed Supplemental Declaration to be prepared which specifically discusses the pertinent events and corrects TDS' misstatements of fact. Acceptance of the Supplemental Declaration for the record herein thus is necessary and appropriate in the public interest to aid the Commission in rendering a fully informed decision on the issues presented.

WHEREFORE, good cause having been shown, Century Cellunet, Inc. respectfully prays that the annexed Supplemental Declaration Under Penalty of Perjury be accepted for filing.

Respectfully submitted,

CENTURY CELLUNET, INC.

By 
Kenneth E. Hardman

2033 M Street, N.W.
Suite 400
Washington, D.C. 20036
Telephone: 223-3772

Its Attorney

September 21, 1989

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
Application for construction permit to establish a new cellular system operating on Frequency Block B in the DPCRTS serving the Wisconsin 8 - Vernon Rural Service Area (Market No. 715)	)	

To: The Chief, Mobile Services Division
Common Carrier Bureau

SUPPLEMENTAL DECLARATION UNDER PENALTY OF PERJURY

I, Fred Englade, hereby state the following:

I have reviewed the Reply to Petition to Deny filed in the above-referenced proceeding by Telephone and Data Systems, Inc. ("TDS") under date of August 28, 1989. I have personal knowledge of the negotiations which led to the Wisconsin RSA 8 Settlement Agreement being entered into by the parties, including the role of TDS in those negotiations. This supplemental declaration is being submitted in order to clarify for the record certain factual matters addressed in the TDS Reply, so that an informed decision can be made on the issues raised by the Petition to Dismiss or Deny filed by Century Cellunet, Inc.

At page 8 of the Reply, TDS claims that Century and the remaining settling parties "chose to admit four non-applicants, including UTELCO, as signatories to the [settlement] agreement"; that "[t]hey did this with full knowledge of UTELCO's partial ownership by TDS"; that "TDS chose not to sign the settlement agreement, a fact of which the signatories to the agreement were obviously aware well before the lottery"; and that "[a]t no time before the lottery did the signatories seek to expel UTELCO from the settlement group or indicate that its participation in the group was improper". (Emphasis added).

TDS does not have its facts straight. As is frequently the case in settlement agreements of this type, the parties were in continuing negotiations on the terms and conditions of the settlement agreement until virtually the last minute. As the Commission will observe, the last version of the agreement (a copy of which was attached to my original declaration) was faxed out to the parties on March 14, 1989 at approximately 12:31 p.m., and initials on the various counterparts of the agreement papers show that changes to the agreement were approved as late as that same day, the day before the lottery.

Even more to the point, up until the lottery itself, all of the applicant parties to the settlement fully expected TDS to sign the agreement, and TDS by its actions affirmatively led them to believe that it would indeed sign

the agreement. For instance, on Monday before the lottery, TDS circulated revised language for the agreement, which was adopted by the parties at TDS' request. In fact, it was not until the morning the lottery was held that I learned for the first time that TDS was obviously refusing at the last minute to enter into the settlement.

As a result of TDS' last-minute change of position, the settling parties actually had no opportunity to (as TDS puts it in its Reply) "seek to expel" UTELCO from the settlement group.

The settlement group's position has always been that TDS and UTELCO could either be "in" the settlement group or "out" of it. We would have preferred a complete market settlement, of course, but we recognized that parties may disagree as to whether or not joining a settlement group best serves their respective business interests. Thus, having both TDS and UTELCO "in" the settlement group or "out" of the settlement group would have been acceptable to the remaining parties, because we recognized that both options are reasonable business strategies.

But it is TDS' attempt to play both sides of the settlement fence -- the "in" side by its affiliate UTLECO, and the "out" side by TDS itself -- to which Century and the settling parties strenuously object. Although TDS attempts to pretend that only Century objects to TDS' actions, the fact is that the remaining settling parties are equally as

upset and desire to have this issue addressed by the Commission. Additionally, even though the factual circumstances in this case are admittedly unusual, Century and the remaining settling parties understand that it is precisely this type of attempt to play both sides of the fence that Section 22.921(b) of the rules is designed to avoid. That is the whole point of Century's petition and the issue which the Commission has been asked to resolve.

I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge. Executed on this 20th day of September, 1989.

Fred Englade

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion for Leave to File Supplemental Declaration and annexed Supplemental Declaration Under Penalty of Perjury upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 21st day of September, 1989.

Kenneth E. Hardman

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

TELEPHONE AND DATA SYSTEMS, INC. File No. 10209-CL-P-715-B-88

For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area: Market No. 715

MEMORANDUM OPINION AND ORDER

Adopted: November 1, 1989; Released: November 13, 1989

By the Chief, Mobile Services Division:

I. BACKGROUND

1. On March 15, 1989, Telephone and Data Systems, Inc. (TDS) won the lottery for the Wisconsin 8 - Vernon Rural Service Area (Wisconsin 8 RSA). *Public Notice*, Report No. CL-89-107 (released March 16, 1989), and was announced as the tentative selectee on June 9, 1989. *Public Notice*, Report No. CL-89-174 (released June 9, 1989). Century Cellunet, Inc. (Century), a mutually exclusive wireline applicant has filed a petition to deny the application of TDS. TDS has filed an opposition to the petition.[1]

II. CONTENTIONS

2. In its Petition to Deny, Century argues that TDS has a prohibited ownership interest in more than one application for the Wisconsin 8 RSA in violation of Section 22.921(b) of the Rules, and that TDS failed to disclose the existence of this prohibited ownership interest as required by Section 1.65 of the Rules. In support of its argument, Century states that ten of the thirteen wireline carriers (hereinafter "wireline applicants") who filed applications for the Wisconsin 8 RSA, including Century itself, and four additional wireline carriers with a presence in the Wisconsin RSA who did not file applications for the Wisconsin 8 RSA (hereinafter "wireline carriers"), entered into a post-filing, pre-lottery, partial settlement agreement. This partial settlement agreement, the Wisconsin RSA Settlement Agreement, provided for the formation of the Wisconsin RSA 8 Partnership, and for the substitution of the Wisconsin RSA 8 Partnership as the applicant should one of the applications of the ten wireline applicants win the lottery. While TDS is not a party to the Wisconsin RSA Settlement Agreement, Century points out, one of the four wireline carriers that never filed an application, and is a party to the settlement agreement is UTELCO, Inc. (UTELCO). TDS owns 49% of the stock of UTELCO.

3. Century argues that, as result of the settlement agreement, all of the signatories hold a one-fourteenth *pro rata* interest (or 7.143%) in each of the ten applications filed by the wireline applicants for the Wisconsin 8 RSA. Therefore, Century contends, since TDS has a 49% interest of UTELCO's 7.143% interest (or 3.5%) in each of the ten applications filed by the wireline applicants, in addition to its own application, TDS has a prohibited ownership interest in more than one application for the same RSA. In addition, Century argues that despite the existence of this prohibited ownership interest, TDS did not disclose this fact to the Commission. For these reasons, Century concludes that TDS's application is defective, and must be dismissed.

4. In opposition, TDS states that settlement agreements do not create "ownership interests" which are subject to Section 22.921(b) of the Rules. TDS states that the participants in settlement agreements do not acquire *pro rata* interests in each others' applications as argued by Century. TDS states that to construe settlement agreements as creating "ownership interests" would effectively preclude all wireline partial settlements, because all the parties to a settlement agreement would hold prohibited interests in each of the other parties' applications. TDS further states that the Wisconsin RSA Settlement Agreement, by its terms, cannot create rights or obligations for its signatories unless one of the wireline applicants wins the lottery. None of the wireline applicants won the lottery, and therefore, TDS contends, the signatories to the settlement agreement do not have any ownership interests in the applications filed by the wireline applicants.

5. In addition, TDS states that it was under no obligation to report the fact that UTELCO entered into the Wisconsin RSA Settlement Agreement. TDS states that it listed its ownership interests in UTELCO in its amendments to its own application in compliance with our Rules.[2] However, TDS contends that since the Wisconsin RSA Settlement Agreement did not change the information in TDS's application, TDS had no obligation to report its existence.

III. DISCUSSION

6. Section 22.921(b) of the Rules provides, in pertinent part, that:

> No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered.

7. The prohibition contained in Section 22.921(b) of the Rules applies only to a party who has an ownership interest in more than one application filed for the same RSA. In this case, TDS does not have any interest in the applications filed by the other wireline applicants. Contrary to Century's argument, the Wisconsin RSA Settlement Agreement did not give each signatory to the agreement a *pro rata* ownership interest in each of the ten applications filed by the wireline applicants. The wireline applicants did not agree to give the members of the

Wisconsin RSA Settlement Agreement an interest in their own applications. Instead, the agreement contained a provision providing that in the event that one of the wireline applicants won the lottery, that wireline applicant would substitute the Wisconsin 8 Partnership as the winning applicant. Since none of the settling applicants won the lottery, the contingent clause never became effective and, thus, no substituted application was ever filed including UTELCO (and, thus, TDS) as a minority partner. In addition, while TDS has an interest in UTELCO, UTELCO did not file an application for the Wisconsin 8 RSA. Thus, within the meaning of Section 22.921(b), TDS does not hold ownership interests in more than one application for the Wisconsin 8 RSA, and therefore, we find that no violation of Section 22.921(b) of the Rules has occurred. Moreover, the Commission has consistently stated that it favors settlement agreements among wireline applicants. *See* Section 22.29 of the Rules. We agree with TDS that to construe Section 22.921(b) of the Rules to prohibit the settlement agreement in this case would be inconsistent with the Commission's policy of favoring full or partial settlements among wireline RSA applicants. *See Requirements for Pre - filing Settlement Agreements by Wireline Applicants in RSA's*, 64 Rad. Reg. (P&F) 1637, 1638 (1988).

8. Section 1.65 of the Rules imposes on each applicant the obligation to maintain the continuing accuracy and completeness of its pending application. This includes the responsibility to disclose the details of settlement agreements involving the applicant. *See Requirements for Pre - filing Settlement Agreements by Wireline Applicants in RSA's, supra*. However, in the case before us, TDS was not a party to the settlement agreement, and UTELCO was not an applicant. In these circumstances, TDS was not obliged to report the existence of the Wisconsin 8 Settlement Agreement.

9. Accordingly, we find that Telephone and Data Systems, Inc. is qualified to hold the non-wireline cellular license for the Wisconsin 8 - Vernon RSA. We also find that grant of the application will serve the public interest, convenience and necessity.

IV. ORDERING PARAGRAPHS

10. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commission's Rules that the application of Telephone and Data Systems, Inc., as amended, File No. 10209-CL-P-715-B-88 IS GRANTED. This authorization does not include the right to any interference protection in any areas outside the Wisconsin 8 - Vernon RSA and is also conditioned upon coordinating with current or future co-channel licensee(s) in the areas outside the RSA. The licensee herein is put on notice that in the event current or future MSA/RSA licensees encounter interference from any extensions, the licensee herein will have to change frequencies in those cells or pull its 39 dBu contours to eliminate any interference due to an extension.

11. IT IS FURTHER ORDERED that the Petition to Deny filed by Century Cellunet, Inc. IS DENIED.

12. IT IS FURTHER ORDERED that all wireline cellular applications in the Wisconsin 8 - Vernon RSA, other than the application of Telephone and Data Systems, Inc. ARE HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] On September 21, 1989, Century filed a Motion for Leave to File Supplemental Declaration of Fred Englade, Century's Manager for RSA Development. Section 1.45 of the Rules provides that additional pleadings may be filed only if authorized by the Commission. Because we find that the Declaration provides no new pertinent facts, we deny Century's Motion.

[2] On April 17, 1989, TDS filed an amendment to its application to update the information regarding the ownership of TDS, and of its subsidiaries and affiliates with interests in Part 22 facilities. On June 29, 1989 TDS filed an additional amendment to its application to report its financial qualifications to build and operate its proposed system in the RSA, and to further update its ownership information and eligibility to apply for the authorization.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Chief, Common Carrier Bureau

PETITION FOR RECONSIDERATION

KENNETH E. HARDMAN, P.C.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036

Attorney for:

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
VIROQUA TELEPHONE COMPANY

December 14, 1989

SUMMARY OF PETITION

TDS' application for the Wisconsin 8 RSA cellular license should have been rejected as defective for violation of the cross-ownership prohibition in Section 22.921(b)(1) of the rules. By entering into a pre-lottery Settlement Agreement, TDS' subsidiary UTELCO obtained a "chose in action" in the various applications subject to the Settlement Agreement, which is a cognizable form of ownewrship interest. By maintaining 100% of its own application for the same RSA while simultaneously entering into the Settlement Agreement through its subsidiary UTELCO, TDS plainly violated the prohibition against "hav[ing] an ownership interest, direct or indirect, in more than one application for the same Rural Service Area".

In reaching the contrary conclusion, the MO&O improperly equated the narrower term "equity" interest for the broader term "ownership" interest actually employed by the rule. Additionally, the conclusion reached by the MO&O should be set aside because it frustrates the purpose of Section 22.921(b)(1) to prevent unfair manipulation of the lottery process, which is precisely what the record before the Commission demonstrates that TDS engaged in.

The record also prima facie establishes bad faith dealings by TDS in the settlement negotiations process, behavior which clearly raises a public interest issue under the Communications Act, but which the MO&O fails to even

acknowledge. The MO&O also should be set aside because if wireline carriers cannot rely on good faith and fair dealing by parties to the wireline settlement negotiations, such a change in the negotiating climate unquestionably will obstruct and impede the ability of the carriers to reach full or partial RSA settlements. The MO&O thus frustrates the Commission's policy favoring wireline settlements.

In the alternative, the Commission should enforce Section 22.33(b) of the rules against TDS. The Commission should disregard the corporate veil between the parent TDS and its subsidiary UTELCO, and should determine that TDS (through UTELCO) was a part of the "joint enterprise" entitled under Section 22.33(b) to cumulative lottery chances. The Commission should afford TDS 30 days in which to amend its application, failing which the application would be dismissed as defective.

Finally, the MO&O's failure to disregard the corporate veil between TDS and UTELCO for purposes of determining compliance with Section 1.65 of the rules is wholly insupportable. In fact the Commission's own rules, viz., Section 22.13(a) (definition of "subsidiary") and Item No. 18 of Form 401, expressly require that the corporate veil be disregarded. Thus, TDS' application also should have been dismissed for violating Section 1.65 of the rules because TDS failed to notify the Commission of the pre-lottery Settlement Agreement by its subsidiary UTELCO.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Chief, Common Carrier Bureau

PETITION FOR RECONSIDERATION

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully petition the Federal Communications Commission to reconsider and reverse the Memorandum Opinion and Order (MO&O) by the Chief, Mobile Services Division, DA 89-1420,

adopted November 1, 1989 and released November 13, 1989, which granted the captioned application. In support of their petition, the Settling Partners respectfully show:

Introduction

In the cellular lottery conducted by the Commission on March 15, 1989, the captioned application of Telephone and Data Systems, Inc. (TDS) was selected for the wireline cellular frequency block in the Wisconsin 8 - Vernon Rural Service Area (the "Wisconsin 8 RSA"). See Public Notice Report No. CL-89-107, dated March 16, 1989; and Public Notice Report No. CL-89-174, dated June 9, 1989.

Each of the Settling Partners is a local exchange carrier (LEC) with a presence in the Wisconsin 8 RSA or a commonly-owned affiliate of such a LEC; and each of the Settling Partners, with the exception of HTC and LTC, filed an application to serve the Wisconsin 8 RSA which was mutually exclusive with the application filed by TDS. In addition, each of the Settling Partners entered into a pre-lottery settlement agreement (the "Wisconsin RSA 8 Settlement Agreement" or "Settlement Agreement"), as expressly permitted by the Commission's rules, whereby a general partnership comprised of the Settling Partners and certain other LECs* would be substituted as the wireline

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* The Settlement Agreement included four LECs with an exchange presence in the Wisconsin 8 RSA who did not file applications there.

cellular licensee in the event an application filed by any of parties to the Settlement Agreement was selected in the lottery.*

TDS actively participated with the Settling Partners throughout the negotiations leading up to the execution of the Settlement Agreement, and had affirmatively led the Settling Partners to believe that TDS would in fact enter into the Settlement Agreement in the ordinary course. However, after leading the Settling Partners to believe that it intended to execute the Settlement Agreement up until the time the lottery was held, TDS refused at the eleventh hour to do so for reasons that still remain a mystery.

One of the four non-applicant LECs admitted to the Settlement Agreement was UTELCO, Inc. (f/k/a United Telequipment Corporation). UTELCO is 49% owned by TDS; and TDS also holds an option to purchase the remaining 51% of UTELCO. When the Settling Partners voted to admit UTELCO into the Settlement Agreement, it was their understanding that both UTLECO and TDS would be executing the Settlement Agreement and joining the partnership. However, as stated earlier, only UTELCO did so -- TDS abruptly refused at the last minute to do so.

The Commission's rules explicitly provide in relevant

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* The mutually exclusive applications filed by the Settling Partners were dismissed by the MO&O. The Settling Partners' interests thus are adversely affected by the MO&O within the meaning of Section 1.106(b) of the Commission's rules, 47 C.F.R. Sec. 1.106(b) (1988).

part that the "joint enterprises" which "result[] from partial settlements among mutually exclusive wireline applicants" for Rural Service Areas "will receive the cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached". 47 C.F.R. Sec. 22.23(b) (1988). UTELCO thus became a general partner in the "joint enterprise" entitled to cumulative lottery chances under the Commission's rules at the same time its parent TDS purported to maintain a wholly independent application for the same RSA.

Stated somewhat differently, in addition to maintaining 100% of its own application for the Wisconsin 8 RSA, TDS also -- through its subsidiary UTELCO -- willfully acquired a pre-lottery general partnership in the "joint enterprise" which maintained additional applications with cumulative lottery chances in the same RSA. TDS did so after leading the Settling Partners to believe that it would also participate on an equal basis in the "joint enterprise" as part of the entire arrangement which resulted in UTELCO being admitted into the same "joint enterprise".

Accordingly, on its own behalf and on behalf of its partners, Century petitioned the Commission to deny TDS' application. Century did so on the ground that TDS' willful acquisition (through UTELCO) of a general partnership in the "joint enterprise" with "cumulative ... lottery chances" created by the Settlement Agreement, while at the same time

maintaining 100% of its own application for the same market, plainly violated the cross-ownership prohibition contained in Section 22.921(b) of the rules, 47 C.F.R. Sec. 22.921(b) (1988), and rendered its application defective. See 47 C.F.R. Sec. 22.20 (1988).

Century also pointed out that TDS' application similarly should be denied for violation of Section 1.65 of the Commission's rules, 47 C.F.R. 1.65 (1988), because TDS never amended its application to reflect the fact that its subsidiary had entered into a post-filing, pre-lottery settlement agreement for the Wisconsin 8 RSA. TDS failed to do so notwithstanding that it twice amended its application after the lottery to update the material information therein.

In the MO&O, however, the Chief, Mobile Services Division, denied the petition to deny and granted TDS' application. The Chief concluded that "TDS did not have any interest in the applications filed by the other wireline applicants" because, according to the Chief, "the Wisconsin RSA Settlement Agreement did not give each signatory to the agreement a pro rata ownership interest in each of the ten applications filed by the wireline applicants". MO&O at Para. 7. This is so, according to the Chief, because the "contingency" provided for in the Settlement Agreement never came to pass, i.e., substitution of the Settlement Partnership for the winning applicant, and because UTELCO

never filed an application for the Wisconsin 8 RSA. Id.

The Chief further opined that adopting the position of the Settling Partners in the petition to deny "would be inconsistent with the Commission's policy of favoring full or partial settlements among wireline RSA applicants". Id. Finally, the Chief concluded that since "TDS was not a party to the settlement agreement, and UTELCO was not an applicant," there was no violation of Section 1.65 of the rules, notwithstanding that the Chief expressly recognized that entering into a partial settlement agreement is precisely the type of material event to which Section 1.65 ordinarily and plainly applies.

Argument in Support of Petition for Reconsideration

The MO&O issued by the Chief should be reversed and annulled because its construction of Section 22.921(b)(1) of the rules is contrary to the ordinary meaning of the term "ownership interest" and is founded upon a patent fallacy; because it is wholly inconsistent with the fundamental purpose of the rule to prevent unfair manipulation of the lottery process; because, precisely contrary to the MO&O's conclusion, the practical effect of the MO&O is actually to discourage and obstruct settlements among wireline applicants; and because the decision set forth in the MO&O is arbitrary, unreasonable and otherwise contrary to the public interest and sound public policy. Moreover, even if the interpretation of Section 22.921(b)(1) by the MO&O is